



DIVISION OF COMMUNITY ADVOCACY

Frank H. Murkowski, Governor

November 22, 2004

Ms. Erika Tritremmel
City Administrator
City of Akutan
3380 C Street
Anchorage, Alaska 99503

Re: *Petition by the City of Akutan, a City Within the Aleutians East Borough, for Annexation of Approximately 54.35 Square Miles of Territory Using the Legislative-Review Method of Annexation (hereinafter "Petition")*

Dear Ms. Tritremmel:

This letter addresses the notice and service requirements of the City's referenced Petition that was accepted for filing by the Department on November 15, 2004. It also sets out the deadlines for filing comments and responsive briefs on the Petition.

Accepting the Petition for filing marks the beginning of the formal opportunity for review and comment to the LBC by interested individuals and organizations regarding the Petition. This agency is committed to a thorough, independent, impartial, meaningful, and valuable analysis of the Petition. Such will require careful consideration of the Petition, timely responsive briefs and comments regarding the Petition, the Petitioner's reply brief, and comments on this agency's preliminary report on the matter.

We look forward to hearing from others regarding the proposal, including the Aleutians East Borough. Once the entire written record has been evaluated, the Department will conduct its formal analysis of the Petition and offer its recommendations.

To move forward, there are a number of formalities required by law. Your immediate attention is required with respect to providing notice to the public that the Petition has been filed. Additionally, copies of the Petition must be served on certain entities. Please read and follow the instructions in this letter carefully. A summary listing of the requirements is enclosed to assist you in that regard.

Public Notice of the Filing of the Petition and Opportunity for Comment.

In accordance with 3 AAC 110.640(a), the Chairman of the LBC has set 4 p.m., February 25, 2005, as the deadline for the receipt in this office of responsive briefs and written comments concerning the Petition. Under 3 AAC 110.450(b), the Department has prepared the public notice of the filing of the Petition.

Such notice must be given by publication, posting, and mailing in accordance with 3 AAC 110.450. The following specific requirements must be met.

- 4 ***Publication.*** The provisions of 3 AAC 110.450(a)(1) require you to publish public notice of the filing of the Petition in a display-ad format once each week for three consecutive weeks in one or more newspapers of general circulation designated by the Department.

The Petition lists the *Dutch Harbor Fisherman* and the *Anchorage Daily News* as the newspapers serving the community of Akutan and the territory proposed for annexation. Because the *Dutch Harbor Fisherman* is characterized as a general interest community newspaper for the Aleutian Islands and is a local newspaper of general circulation in the area, the Department hereby designates it as the newspaper for publication of the notice of the filing of the Petition. Publication of the notice in *Anchorage Daily News* is left to your discretion.

To facilitate the required publication, we have arranged on your behalf for publication of the notice in the *Dutch Harbor Fisherman* on December 2, 9, and 16, 2004. However, since it is the Petitioner's responsibility for publication of the notice, billings for those publications will be sent to you for payment.

Please monitor the *Dutch Harbor Fisherman* to ensure that publication of the notice occurs as scheduled. A request for publication in the *Dutch Harbor Fisherman* is enclosed for your information. If publication does not occur as scheduled, please contact Jeanne McPherren (1-907-269-4594) or me (1-907-269-4559).

In the event that you elect to publish the notice in the *Anchorage Daily News*, the camera-ready copy of the notice for that newspaper is enclosed.

The Department has arranged to publish the notice on the State's Internet Web site, *Online Public Notice* <<http://notes3.state.ak.us/pn/pubnotic.nsf>>. The Department will also publish the notice on the LBC's Internet Web site <<http://www.commerce.state.ak.us/dca/lbc/ketchikan3.htm>>.

- 4 ***Posting of Notice.*** As required by 3 AAC 110.450(a)(2), notice of the filing of the Petition must be posted in *at least* the following six prominent locations readily accessible to the public within Akutan and near the area proposed for annexation:

1. City of Akutan Offices (Akutan);
2. Akutan Post Office;
3. Aleutians East Borough School Building, Akutan;
4. McGlashan Store;
5. City of Akutan Health Clinic; and
6. Trident Seafoods Main Office, Akutan.

Additionally, as outlined below, you are also required to include the notice with each of the complete sets of Petition documents available for public review at the Office of the City of Akutan, in Akutan and Anchorage. Ten copies of the notice of filing (8.5-inch by 11-inch) are enclosed for your use.

In order to coordinate the publication and posting of the notice, the notice must be posted in the locations noted above and deposited with the Petition documents available for public review at the locations noted below no later than December 2, 2004.

Under 3 AAC 110.450(a)(3), you must ensure that the notice remains posted at all locations until the close of the comment period on February 25, 2005. The Department suggests that the notices be inspected at least once each week to ensure that they remain posted until the deadline for filing responsive briefs and comments.

4 *Notice to Specific Individuals and Organizations.*

Under 3 AAC 110.450(a)(4), you must hand deliver or mail, postage prepaid, the notice of the filing of the Petition, correctly addressed to all municipalities having jurisdictional boundaries extending within twenty miles of the proposed expanded boundaries of the City of Akutan. The Petition identifies the following such municipality (the post office box listed below is from this agency's data base):

Aleutians East Borough
P.O. Box 349
Sand Point, Alaska 99661

The notice should be mailed to that local government no later than December 2, 2004. As a courtesy, please provide a copy of the notice at the same time to Robert Juettner, Aleutians East Borough Administrator, at 3380 "C" St., Suite 205 Anchorage, AK 99503.

In conjunction with arranging for publication of the public notice, the Department has provided notice of the filing of the Petition to Senator Lyman Hoffman, Representative Carl Moses, members of the LBC, heads of principal State agencies, and other appropriate State officials. A list of State officials to whom the Department has provided notice is enclosed.

You have also listed other entities that you believe may warrant individual notice. Sending notice to those entities is left to your discretion.

- 4 ***Request for Public Service Announcement.*** Under 3 AAC 110.450(a)(5), you are required to submit a request for a public service announcement of the filing of the Petition to *at least one* radio station or television station serving the greater community of Akutan. The law further specifies that you must request that announcement be made for fourteen days following receipt of the request.

The Petition lists one radio station as serving the proposed annexation. Please mail the request for the public service announcement to KIAL/AM, the local public broadcasting station by December 2, 2004.

The Department has prepared the enclosed public service announcement of the filing of the Petition for your use.

Service of Petition.

In accordance with 3 AAC 110.460(a), a complete copy of the Petition, including the "corrected" legal descriptions in Exhibits A and B and Resolution 04-05, must be served on the following local government:

Aleutians East Borough
P.O. Box 349
Sand Point, Alaska 99661

This must be done by December 2, 2004. The copy and exhibits used for service must conform in size and color to the original Petition and include the correct legal description and resolution as discussed above.

Opportunity for Public Review of Petition Materials.

In accordance with 3 AAC 110.460(b), you must make a **full set** of Petition documents, including the "corrected" legal descriptions in Exhibits A and B and Resolution 04-05, available for public review beginning December 2, 2004, at each of the following locations:

City of Akutan Offices
Akutan

City of Akutan Offices
Anchorage

In addition to the Petition itself, the "Petition documents" includes the following:

- § State laws establishing standards and procedures applicable to this consolidation proposal (enclosed),
- § notice of the filing of the Petition (enclosed),
- § any timely responsive briefs,
- § any timely written comments concerning the Petition,
- § any reply brief from the Petitioner,
- § this agency's preliminary report to the LBC concerning the Petition,
- § any public comments on the preliminary report,
- § notice of the LBC hearing;
- § this agency's final report,
- § the LBC's decisional statement, and
- § any materials regarding any request for reconsideration.

Except for the timely responsive briefs, Petitioner's reply brief, and materials regarding requests for reconsideration, this agency will provide you with three copies of all of the above materials (one for each of the three sets of Petition documents available for public review and one for you). Respondents are required to provide you with two copies of each responsive brief. A person or entity seeking reconsideration is required to provide you with one copy of the request for reconsideration. You will have to make copies of those materials along with the Petitioner's reply brief for the Petition documents available at the Offices of the City of Akutan in Akutan and Anchorage.

Within 24 hours of receipt, any new materials should be added to the Petition documents available for public review at the three sites. The Petition documents must be made available at the two locations during the times listed in the Petition. The City Office's days and hours of operation satisfy the requirement of 3 AAC 110.460 that you must "accommodate specific requests for public review of the petition documents at reasonable times in the evening," but you must also make them available on request on weekend days. For purposes of complying with the notice requirements of 3 AAC 110.460(b), we designate that day as Saturday. Further, the Petition documents must remain available for public review through **the last date on which a court could order the LBC to reconsider some aspect of its decision regarding the proposal**, not the limited period proposed in the Petition.

Additional Copies of the Petition.

The five additional complete copies of the Petition required by 3 AAC 110.470 must be provided to this office by January 4, 2005, and must include the corrected legal descriptions in Exhibits A and B and a signed copy of Resolution 04-05, must now be provided to this office as required by 3 AAC 110.470.

Proof of Notice and Service.

The provisions of 3 AAC 110.470 require that you provide to this office by January 4, 2005, a sworn affidavit that the steps outlined herein have been completed. A form is enclosed for your use in that regard.

The affidavit should be submitted to me at the address noted on the letterhead. If you have questions or desire further information concerning any of the matters outlined in this letter, please call Jeanne McPherrin or me.

Sincerely,

DIVISION OF COMMUNITY ADVOCACY

Dan Bockhorst
Local Boundary Commission Staff

Enclosures:

1. summary listing of requirements for notice, service, and deposit of the Petition;
2. request for publication of the notice of filing of the Petition in the *Dutch Harbor Fisherman*;
3. camera-ready copy of the notice for publication at Petitioner's discretion in the *Anchorage Daily News*;
4. 10 copies of *Public Notice of Filing of Petition by the City of Akutan to Annex 52 Miles of Territory Using the Legislative-Review Method of Annexation*, (8.5" X 11" format for posting and deposit with Petition documents available for public review);
5. list of State officials to whom notice of the filing of the Petition was provided by the Department
6. public service announcement of the filing of the Petition;
7. three sets of laws establishing standards governing the proposed annexation (Art. X, secs. 1, 5, and 12, Alaska Constitution; 3 AAC 110.090 - 3 AAC 110.140; and 3 AAC 110.900 - 3 AAC 110.990);
8. three sets of laws establishing procedures applicable to the annexation proposal (AS 29.06.040 - 29.06.060; AS 44.33.810 - 44.33.828; and 3 AAC 110.400 - 3 AAC 110.660);
9. form for affidavit of notice, service, and deposit of the Petition.

cc: The Honorable Darroll Hargraves, Chairman, Local Boundary Commission
The Honorable Joe Bereskin, Mayor, City of Akutan
The Honorable Stanley Mack, Mayor, Aleutians East Borough
Robert Juettner, Aleutians East Borough Administrator
Jeanne McPherrin, Local Boundary Commission Staff

CHECKLIST FOR NOTICE, SERVICE, AND DEPOSIT OF PETITION FOR ANNEXATION OF TERRITORY TO THE CITY OF AKUTAN

ACTION REQUIRED	BASIS IN LAW	DEADLINE
Make a full set of Petition documents available for public review at the Akutan City Offices in Akutan and in Anchorage	3 AAC 110.460(b)	Prior to the first date of publication or posting of the notice of the filing of the Petition
Add new parts of the record to the materials available for public review	3 AAC 110.460(b)	As the materials are received
Post notice of the filing of the Petition at: <ul style="list-style-type: none"> • Akutan City Offices, Akutan; • Akutan Post Office; • Aleutians East Borough School Building, Akutan; • McGlashan Store; • City of Akutan Health Clinic; and • Trident Seafoods Main Office, Akutan 	3 AAC 110.450(a)(2)	December 2, 2004
Inspect the notices to ensure that they remain posted	3 AAC 110.450(a)(3)	On a reasonable basis (suggested to be on a weekly basis) through February 25, 2005
Provide for initial publication of notice <ul style="list-style-type: none"> • in the <i>Dutch Harbor Fisherman</i> • as a display ad – 2 columns by 6 inches once each week for three <i>consecutive</i> weeks 	3 AAC 110.450(a)(1)	December 2, 2004
Second publication of notice in the <i>Dutch Harbor Fisherman</i> as outlined above	3 AAC 110.450(a)(1)	1 week following the initial publication of notice
Third publication of notice in the <i>Dutch Harbor Fisherman</i> as outlined above	3 AAC 110.450(a)(1)	1 week following the second publication of notice
Hand deliver or mail notice to the <ul style="list-style-type: none"> • Mayor of the Aleutians East Borough, • Robert Juettner, Borough Administrator Aleutians East Borough	3 AAC 110.450(a)(4)	December 2, (but it would be best to do so ASAP)
Serve a complete copy of the Petition on the Aleutians East Borough	3 AAC 110.460(a)	December 2, 2004. (but it would be best to do so ASAP)
Deliver five additional sets of Petition documents to the Department	3 AAC 110.470	January 4, 2005
Deliver to the Department the affidavit of notice, service, and deposit of Petition	3 AAC 110.470	January 4, 2005
Send Public Service Announcement to KIAL/AM and request it be broadcast for 14 days following receipt of PSA request	3 AAC 110.450(a)(5)	December 2, 2004

Subject: [Fwd: Display Ad for Publication in Dutch Harbor Fisherman]
From: Jeanne Mcpherren <jeanne_mcpherren@commerce.state.ak.us>
Date: Wed, 01 Dec 2004 13:54:22 -0900
To: Jennie B Morrison <jennie_morrison@commerce.state.ak.us>

As you requested.

Subject: Display Ad for Publication in Dutch Harbor Fisherman
From: Jennie Morrison <jennie_morrison@commerce.state.ak.us>
Date: Tue, 23 Nov 2004 11:09:39 -0900
To: dmartucci@alaskanewspapers.com
CC: Dan Bockhorst <dan_bockhorst@commerce.state.ak.us>, Lorna J Mcpherren <jeanne_mcpherren@commerce.state.ak.us>

Good Morning.

Attached is a camera-ready public notice (2 column x 6.25 inches) to be published as a display ad in the following editions of the Dutch Harbor Fisherman:

December 2, 2004
December 9, 2004
December 16, 2004

This public notice announces the filing of the petition for annexation of territory to the City of Akutan.

Pursuant to 3 AAC 110.450(a)(1), the party petitioning for annexation is responsible for payment of this ad. Please send an affidavit of publication, tear sheet, and billing to the following party:

Ms. Erika Tritremmel
City Administrator
City of Akutan
3380 C Street
Anchorage, AK 99503

If you have problems opening this file (PDF Format), please let me know immediately. My phone number is 907-269-4560. If I am unavailable, please contact Dan Bockhorst at 907-269-4559.

[Jennie Morrison](mailto:jennie_morrison@commerce.state.ak.us) <jennie_morrison@commerce.state.ak.us>

Publication Technician II
Department of Commerce, Community, and Economic Development
State of Alaska

Display Ad for Publication in Dutch Harbor Fisherman

Content-Type: message/rfc822
Content-Encoding: 7bit

camera ready.pdf

Content-Type: application/pdf
Content-Encoding: base64

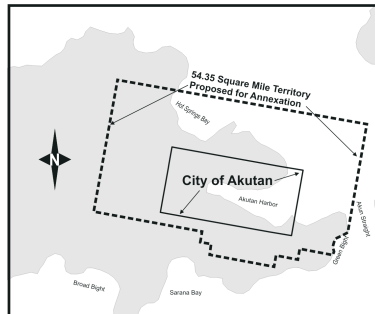


Public Notice

Petition to Annex Territory to the City of Akutan

The City of Akutan (City) has petitioned the Alaska Local Boundary Commission (LBC) for the annexation of an estimated 54.35 square miles, comprised of 32.17 square miles of lands and 22.18 square miles of tidelands and submerged lands. The territory proposed for annexation (territory) encompasses the uplands on the northern and southern side of Akutan Harbor along with the uplands west of the City boundaries and waters east of the existing boundaries. The new City boundaries would encompass approximately 70 square miles. A map of the territory is provided below.

Complete petition materials, including detailed maps of the territory, are available for public review at the following locations:



Akutan City Offices
Akutan, Alaska
Monday – Friday (9 a.m. – 5 p.m.)
On Request: Monday - Friday
(6 p.m. - 10 p.m.)
On Request: Saturday

Akutan City Office
3380 C Street, Suite 205
Anchorage, Alaska
Monday - Friday (8 a.m. – 5 p.m.)
On Request: Monday - Friday
(6 p.m. - 10 p.m.)
On Request: Saturday

The City's petition is also available for review on the Internet at:

<http://www.commerce.state.ak.us/dca/lbc/lbc.htm>

Responsive briefs supporting or opposing the City's annexation proposal may be filed in accordance with 3 AAC 110.480. Informal written comments on the petition are also welcome. The legal criteria governing annexation to cities are found in 3 AAC 110.090 - 3 AAC 110.140. A copy of these laws is available for review with the petition materials at the Homer City Hall and Public Library. Information about the standards and procedures for annexation is also available on the Internet site listed above.

To be considered, responsive briefs filed under 3 AAC 110.480 and informal written comments supporting or opposing the petition must be **received** at the following address by **February 25, 2005**: **Local Boundary Commission Staff; 550 West Seventh Avenue, Suite 1790; Anchorage, AK 99501-3510; Fax: 907-269-4539; e-mail: LBC@commerce.state.ak.us**

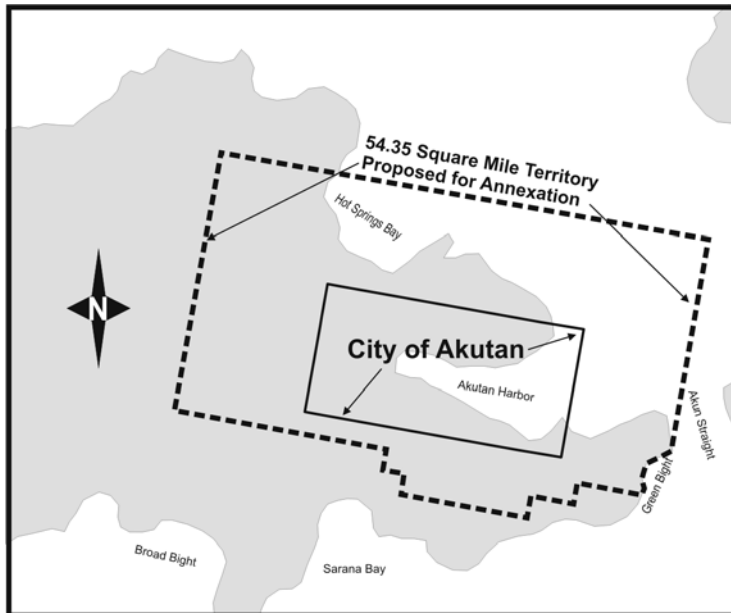
Inquiries concerning this matter may also be directed to LBC Staff at 907-269-4594.



Public Notice

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Akutan City Offices

Akutan, Alaska

Monday – Friday (9 a.m. – 5 p.m.)

On Request: Monday - Friday (6 p.m. - 10 p.m.)

On Request: Saturday

Akutan City Office

3380 C Street, Suite 205

Anchorage, Alaska

Monday - Friday (8 a.m. – 5 p.m.)

On Request: Monday - Friday
(6 p.m. - 10 p.m.)

On Request: Saturday

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Inquiries concerning this matter may also be directed to LBC Staff at 907-269-4594.

**COMMERCE DISTRIBUTION LIST
STATE OFFICIALS**

Bob Hicks
Vice-Chair
Local Boundary Commission
P.O. Box 1329
Seward AK 99664

Robert Harcharek
Commissioner
Local Boundary Commission
P.O. Box 193
Barrow AK 99723

Darroll Hargraves
Chair
Local Boundary Commission
P.O. Box 872541
Wasilla AK 99687-8541

Anthony T. Nakazawa
Commissioner
Local Boundary Commission
P.O. Box 81710
Fairbanks AK 99708

Georgianna Zimmerle
Commissioner
Local Boundary Commission
P.O. Box 7022
Ketchikan AK 99901

Kate Giard
Chair
Department of Community & Economic Development
Regulatory Commission of Alaska
701 W. 8th Avenue, Suite 300
Anchorage AK 99501

Doug Griffin
Director
Department of Public Safety
Alcoholic Beverage Control Board
5848 East Tudor Road
Anchorage AK 99507

Ray Matiashowski
Commissioner
Department of Administration
P.O. Box 110200
Juneau AK 99811-0200

Marc Antrim
Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau AK 99801

Roger Sampson
Commissioner
Department of Education & Early Development
801 West Tenth Street, Suite 200
Juneau AK 99801-1894

Kurt Fredriksson
Acting Commissioner
Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau AK 99801-1795

Kevin Duffy
Commissioner
Department of Fish & Game
P.O. Box 25526
Juneau AK 99802-5526

Joel Gilbertson
Commissioner
Department of Health & Social Services
P.O. Box 110601
Juneau AK 99811-0601

Greg O'Claray
Commissioner
Department of Labor & Workforce Development
P.O. Box 21149
Juneau AK 99802-1149

Greg Williams
State Demographer
Department of Labor & Workforce Development
P.O. Box 25501
Juneau AK 99802

Neal Fried
Labor Economist III
Department of Labor & Workforce Development
Division of Administrative Services
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Anchorage AK 99510-7018

Gregg Renkes
Attorney General
Department of Law
P.O. Box 110300
Juneau AK 99811-0300

Tom Irwin
Commissioner
Department of Natural Resources
400 Willoughby Avenue, 5th Floor
Juneau AK 99801-1724

Bill Tandeske
Commissioner
Department of Public Safety
P.O. Box 111200
Juneau AK 99811-1200

Bill Corbus
Commissioner
Department of Revenue
P.O. Box 110400
Juneau AK 99811-0400

Mike Barton
Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau AK 99801-7898

Julia Grimes
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Division of Alaska State Troopers
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Anchorage AK 99507-1225

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Assistant Attorney General
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Labor and State Affairs Section
P.O. Box 110300
Juneau AK 99811-0300

Ingrid Zaruba
Research Analyst
Department of Labor & Workforce Development
State Data Center
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Juneau AK 99802-5504

Col. Craig Campbell
Adjutant General
Department of Military & Veteran Affairs
P.O. Box 5800
Ft. Richardson AK 99505-5800

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Director
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550 West Seventh Avenue, Suite 1770
Anchorage AK 99501

Steve Van Sant
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Section Chief
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Edgar Blatchford
Commissioner
Department of Commerce, Community, & Economic Development
550 W. 7th Avenue, Suite 1770
Anchorage AK 99501

**COMMERCE DISTRIBUTION LIST
STATE OFFICIALS**

Al Clough
Deputy Commissioner
Department of Commerce, Community, & Economic
Development
P.O. Box 110800
Juneau AK 99811-0800

Mark Davis
Director
Department of Commerce, Community, & Economic
Development
Division of Banking, Securities, & Corporations
550 W. 7th Avenue, Suite 1940
Anchorage AK 99501



PUBLIC SERVICE ANNOUNCEMENT

Petition to Annex Territory to the City of Akutan

**PLEASE BROADCAST THIS PSA FOR FOURTEEN DAYS
FROM THE DATE OF RECEIPT**

The City of Akutan (City) has petitioned the Alaska Local Boundary Commission (LBC) for annexation of an estimated 54.35 square miles, comprised of 32.17 square miles of lands and 22.18 square miles of tidelands and submerged lands. The territory proposed for annexation encompasses the uplands on the northern and southern side of Akutan Harbor along with the uplands west of the City boundaries and waters east of the existing boundaries. The new City boundaries would encompass approximately 70 square miles

The annexation petition and related documents are available for public review at the Akutan City Offices in Akutan and Anchorage. The City Office in Akutan is open Monday - Friday from 9 a.m.- 5 p.m. Specific requests to review the petition documents at those offices at reasonable times in the evenings and on weekends will also be accommodated.

Written comments and responsive briefs supporting or opposing the incorporation petition may be filed with the Local Boundary Commission no later than 4 p.m., Friday, February 25, 2005. Comments and briefs must be received by the deadline.

Details about the filing of written comments and responsive briefs, including the mailing address, fax number, and e-mail address are provided in the complete public notice of the filing of the petition which is posted at:

1. City of Akutan Offices (Akutan);
2. Akutan Post Office;
3. Aleutians East Borough School Building;
4. McGlashan Store;
5. City of Akutan Health Clinic; and
6. Trident Seafoods Main Office, Akutan

Inquiries concerning the incorporation proposal may be directed to the Petitioner's Representative, Erika Tritremmel, at 1-907-274-7555. The Petitioner's consultant is Lamar Cotten, 1-907-301-8737.

Inquires may also be directed to the Local Boundary Commission staff at 1-907-269-4560.

ARTICLE X

Local Government

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Cross References - For statutory provisions relating to liberal construction and extent of local powers, see AS 29.35.400 - 29.35.420.

Decisions -

Home rule is constitutionally recognized in Alaska. - *State v. Jennings*, 555 P.2d 248 (Alaska 1976).

Section encourages creation of borough governments. - Aside from the standards for incorporation in former AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. The Alaska Constitution encourages their creation. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

The supreme court reads this section to favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Boroughs are not restricted to the form and function of municipalities. - They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Intent of rule in second sentence. - The constitutional rule of liberal construction found in the second sentence was intended to make explicit the framers' intention to overrule a common-law rule of interpretation which required a narrow reading of local government powers. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Taxing authority under former AS 29.48.010(7) consistent with second sentence. - The broad grant of taxing authority to municipalities under AS 29.48.010(7) (see now AS 29.35.010(6)), limited only by other provisions of law, was consistent with the second sentence of this section, which requires that "a liberal construction shall be given to the powers of local government." *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

There is no general prohibition against like municipal and state taxes. - *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Power to impose civil penalty for failure to timely pay sales taxes. - The power of a municipality to impose a civil penalty for failure to timely file or pay sales taxes is granted primarily because this section requires that a liberal construction be given to the powers of municipalities, a rule of interpretation that is echoed by statute see now AS 29.35.400 - 29.35.420. *Bookey v. Kenai Peninsula Borough*, 618 P.2d 567 (Alaska 1980).

Discussion of state preemption of taxation by general-law municipalities. - See *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

The Public Employment Relations Act, AS 23.40.070 et seq., - is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of the Public Employment Relations Act - when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, ch. 113, Sec. 4, SLA 1972. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Purpose of statutes authorizing state land selection by borough or city. - The enactment of former AS 29.18.190 and 29.18.200, authorizing state land selection by a borough or city, was designed to further the goal of maximum local self-government reflected in this section. *North Slope Borough v. LeResche*, 581 P.2d 1112 (Alaska 1978).

Applied in *Jefferson v. State*, 527 P.2d 37 (Alaska 1974); *City of Kodiak v. Jackson*, 584 P.2d 1130 (Alaska 1978); *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

Quoted in *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970); *City of*

Douglas v. City & Borough of Juneau, 484 P.2d 1040 (Alaska 1971); State, Pub. Offices Comm'n v. Marshall, 633 P.2d 227 (Alaska 1981); Simpson v. Municipality of Anchorage, 635 P.2d 1197 (Alaska Ct. App. 1981); State v. Alex, 646 P.2d 203 (Alaska 1982); City of Anchorage v. Richards, 654 P.2d 797 (Alaska Ct. App. 1982); Municipality of Anchorage v. Afualo, 657 P.2d 407 (Alaska Ct. App. 1983).

Cited in Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962); Gilman v. Martin, 662 P.2d 120 (Alaska 1983); Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs, 751 P.2d 14 (Alaska 1988).

Section 5. Service Areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

AG Opinions - The legislature could establish school service areas in an unorganized borough by general law subject to the restrictive limitations of this section. 1961 Op. Att'y Gen. No. 24.

A home rule city does not have unreined authority to create service areas and impose a tax rate on that service area without complying with statutory law. December 8, 1986 Op. Att'y Gen.

Decisions -

Applied in Falke v. Fairbanks N. Star Borough, 648 P.2d 597 (Alaska 1982).

Quoted in Concerned Citizens v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974); State v. Alex, 646 P.2d 203 (Alaska 1982); Fairbanks N. Star Borough v. College Utils. Corp., 689 P.2d 460 (Alaska 1984).

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Cross References -

For provisions concerning the local boundary commission, see AS 44.47.565 - 44.47.583.

Decisions -

The intention of this section - and its implementing statute, AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The advantage of the method proposed, - in the words of the committee on local government, "* * * lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

The relevant minutes of the meetings of the committee on local government show clearly the concept that was in mind when this section was being considered: That local political decisions do not usually create proper boundaries and that boundaries

should be established at the state level. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

The concept that was in mind when this section was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968).

The framers of the Alaska Constitution thought that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

When method became operative. - The method for making boundary changes contemplated by this section was operative upon the enactment of the 1959 statutes creating a local boundary commission (SLA 1959, ch. 64, Sec. 7) and conferring powers upon it (SLA 1960, ch. 45). *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

This section established two methods by which local boundaries might be changed: - (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The local action provision of this section has been implemented - by legislation (AS 29.68.010) and by administrative action (19 AAC Sec. 15.010 et seq.). *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Section implemented by AS 44.47.567. - See *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Provisions of AS 44.47.567 and 44.47.583. - By AS 44.47.567 and 44.47.583, it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

This section empowers the legislature to veto commission actions. - *United States Smelting,*

Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Legislative review for compliance. - This section does nothing to compel the legislature to review for compliance with its own requirements. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

This section and AS 44.47.583 do not make the decision as to whether the commission has complied with the law exclusively legislative. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Veto power defined. - The legislative veto power granted in Alaska Const., art. III, Sec. 23 and this section, is the power to change statutes, not rule-making power, which is the power to interpret and implement statutes. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

Legislature handicapped in absence of known standards governing change of boundary lines. - Under Alaska's constitution, the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Annexation of community without consent of residents. - Residents of a community have no constitutionally protected interest in its existence as a separate governmental unit. Hence, the legislature may provide for the annexation of a community without its residents' consent. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Administratively-selected method of annexation is controlling. - The selection of annexation method made by the commission and approved by the legislature is controlling. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Dissolution of utility district upon annexation. - The provision of former AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city" had application only where annexation took place under the petition-election procedure of former AS 29.70.010 to 29.70.240, and had no application where annexation takes place under a different method established by this section. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

Submission of an accepted incorporation petition to the legislature is not required - by the state constitution. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

The convention debating adoption of this article simply did not address the question of whether incorporation petitions must be submitted to the legislature. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Extension of city services. - All annexations will have the purpose and effect, in part, of extending city services. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The basic purpose for creating the boundary commission - and conferring upon it the powers that it possesses was to obviate the type of situation where there was a controversy over municipal boundaries which apparently could not be settled at the local level. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

This policy does not reach creation of an organized borough - from the nonfunctioning unorganized borough. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Carving a new unit of government from the unorganized borough generates no controversy between governments with competing economic and political interests. The conflicts accompanying boundary adjustments between two functioning governments which must be submitted to the legislature under this section do not afflict mere incorporation. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Wood River made part of city of Dillingham. - When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part of the city of Dillingham. When the boundary commission's proposal for boundary change become effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968).

Quoted in *Graham v. City of Anchorage*, 364 P.2d 57 (Alaska 1961).

Stated in *Walters v. Cease*, 394 P.2d 670 (Alaska 1964).

Cited in *Pavlik v. State, Dep't of Community & Regional Affairs*, 637 P.2d 1045 (Alaska 1981).

Article 3 Standards for Annexation to Cities

Section

- 90. Needs of the territory.
- 100. Character.
- 110. Resources.
- 120. Population.
- 130. Boundaries.
- 135. Best interests of state.
- 140. Legislative review.

3 AAC 110.090. Needs of the territory

(a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including

(1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city;

(2) existing or reasonably anticipated health, safety, and general welfare conditions;

(3) existing or reasonably anticipated economic development;

(4) adequacy of existing services;

(5) extraterritorial powers of the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and

(6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.

(b) Territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.100. Character

The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.110. Resources

The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the

- (1) reasonably anticipated functions of the city in the territory being annexed;
- (2) reasonably anticipated new expenses of the city that would result from annexation;
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the third full fiscal year of operation after annexation;
- (5) economic base of the city after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents in the territory and in the city; and

(10) need for and availability of employable skilled and unskilled persons to serve the city as a result of annexation.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.120. Population

The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.130. Boundaries

(a) The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the full development of essential city services on an efficient, cost-effective level.

(c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

(d) The proposed boundaries of the city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135.

(e) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.135. *Best interests of state*

In determining whether annexation to a city is in the best interests of the state under AS 29.06.040 (a), the commission may consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local services.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.140. *Legislative review*

Territory that meets the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:

- (1) the territory is an enclave surrounded by the annexing city;
- (2) the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

(3) the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;

(4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;

(6) repealed 5/19/2002;

(7) annexation of the territory will promote local self-government with a minimum number of government units;

(8) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in AS 29.05 and 3 AAC 110.005 - 3 AAC 110.042;

(9) the commission determines that specific policies set out in the Constitution of the State of Alaska or AS 29.04, 29.05, or 29.06 are best served through annexation of the territory by the legislative review process.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

Article 13 General Provisions

Section

- 900. Transition.
- 910. Statement of non-discrimination.
- 920. Determination of community.
- 970. Determination of essential city or borough services.
- 980. Determination of best interests of the state.
- 990. Definitions.

3 AAC 110.900. Transition

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.05.130; AS 29.05.140; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.150; AS 29.06.160; AS 44.33.812

3 AAC 110.910. Statement of non-discrimination

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

History: Eff. 7/31/92, Register 123 | Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

Publisher's note: The authorities list is set out above to reflect changes from the list set out in the main pamphlet.

3 AAC 110.920. Determination of community

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 individuals;

(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and

(3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted;

(2) the population is adjacent to a community and is dependent upon that community for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

3 AAC 110.970. Determination of essential city or borough services

(a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the territory; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(b) The commission may determine essential borough services to include

(1) assessing and collecting taxes;

(2) providing primary and secondary education;

(3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the community; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing and collecting taxes;
- (3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;
- (4) public safety protection;
- (5) planning, platting, and land use regulation; and
- (6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.011; AS 29.05.031; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.450; AS 29.06.500; AS 44.33.812

3 AAC 110.980. Determination of best interests of the state

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

- (1) the broad policy benefit to the public statewide; and
- (2) whether the municipal government boundaries that are developed serve
 - (A) the balanced interests of citizens in the area proposed for change;
 - (B) affected local governments; and
 - (C) other public interests that the commission considers relevant.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.011; AS 29.05.031; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.450; AS 29.06.500; AS 44.33.812

3 AAC 110.990. Definitions

Unless the context indicates otherwise, in this chapter

(1) "borough" means a general law borough, a home rule borough, or a unified municipality;

(2) "coastal resource service area" means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180;

(3) "commission" means the Local Boundary Commission;

(4) "commissioner" means the commissioner of community and economic development;

(5) a "community" means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

(6) "contiguous" means, with respect to territories and properties, adjacent, adjoining, and touching each other;

(7) "department" means the Department of Community and Economic Development;

(8) "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" includes one or more of the following:

(A) assessing, levying, and collecting taxes;

(B) providing education, public safety, public health, and sanitation services;

(C) planning, platting and land use regulation;

(D) conducting elections; and

(E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;

(9) "model borough boundaries" means those boundaries set out in the commission's publication Model Borough Boundaries, revised as of June 1997 and adopted by reference;

(10) "permanent resident" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;

(11) "political subdivision" means a borough or city organized and operated under state law;

(12) "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; "property owner" does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land;

(13) "regional educational attendance area" means an educational service area established and organized under AS 14.08 and AS 29.03.020 ;

(14) "witnesses with expertise in matters relevant to the proposed change" means individuals who are

(A) specialists in relevant subjects, including municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or

(B) long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other characteristics of the community or region.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

Editor's note: The Local Boundary Commission's publication Model Borough Boundaries, adopted by reference in 3 AAC 110.990, is on file at the offices of the Local Boundary Commission staff, Department of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, Alaska, and is available at the web site of the Department of Community and Economic Development, at www.commerce.state.ak.us/cbd/lbc/lbc.htm.

Alaska Statutes
AS 29.06.040 - .060

Sec. 29.06.040. Local Boundary Commission. (a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under the AS 44.62 (Administrative Procedure Act).

(b) The Local Boundary Commission may present a proposed municipal boundary change to the legislature during the first 10 days of a regular session. The change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(c) In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection must include a provision that

(1) a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;

(2) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

(d) A boundary change effected under (a) and (b) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 5 ch 74 SLA 1985; am § 14 ch 58 SLA 1994; am § 36 ch 30 SLA 1996; am § 29 ch 58 SLA 1999; am § 3 ch 86 SLA 1999)

Effect of amendments. — The first 1999 amendment, effective July 1, 1999, substituted AS 44.33.812 for AS 44.47.567 in the first part of subsection (c) The second 1999 amendment, effective September 28, 1999, made changes to subsection (a). The 1996 amendment, effective May 16, 1996, inserted “must” in the second sentence of subsection (c). The 1994 amendment, effective August 22, 1994, in subsection (a), in the second sentence, substituted “amend” for “alter the boundaries” and deleted “as altered” at the end.

Sec. 29.06.050. Annexation of military reservations. A military reservation may be annexed to a municipality in the same manner as prescribed for other territory under AS 29.06.040. If a city in a borough annexes a military reservation under this section, the area encompassing the military reservation automatically is annexed to the borough in which the city is located. (§ 5 ch 74 SLA 1985)

Sec. 29.06.055. Property taxes in annexed or detached areas. (a) Unless the annexation takes effect on January 1, the annexing municipality may not levy property taxes in an annexed area before January 1 of the year immediately following the year in which the annexation takes effect. However, notwithstanding other provisions of law, the municipality may provide services in the annexed area that are funded wholly or partially with property taxes during the period before the municipality may levy property taxes in the annexed area.

(b) If an area is detached from a municipality, all property taxes that are levied by that municipality on property in the detached area based on an assessment that occurred before the effective date of the detachment remain valid. AS 29.45.290 - 29.45.500 apply to the enforcement of those taxes. (§ 2 ch 012 SLA 2004)

Sec. 29.06.060. Application. AS 29.06.040 - 29.06.060 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

Title 44

Local Boundary Commission

Sec. 44.33.810. Local Boundary Commission.

There is in the Department of Community and Economic Development a Local Boundary Commission. The Local Boundary Commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in [AS 22.10.010](#) and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission.

Sec. 44.33.812. Powers and duties.

- (a) The Local Boundary Commission shall
- (1) make studies of local government boundary problems;
 - (2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;
 - (3) consider a local government boundary change requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state; and
 - (4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.
- (b) The Local Boundary Commission may
- (1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and
 - (2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.

Sec. 44.33.814. Meetings and hearings.

The chair of the commission or the commissioner of community and economic development with the consent of the chair may call a meeting or hearing of the Local Boundary Commission. All meetings and hearings shall be public.

Sec. 44.33.816. Minutes and records.

The Local Boundary Commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a public record. All votes taken by the commission shall be entered in the minutes.

Sec. 44.33.818. Notice of public hearings.

Public notice of a hearing of the Local Boundary Commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing must include the time, date, place, and subject of the hearing. The commissioner of community and economic development shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place, whichever is most feasible.

Sec. 44.33.820. Quorum.

Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing.

Sec. 44.33.822. Boundary change.

A majority of the membership of the Local Boundary Commission must vote in favor of a proposed boundary change before it may be presented to the legislature.

Sec. 44.33.824. Expenses.

Members of the Local Boundary Commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions under [AS 39.20.180](#).

Sec. 44.33.826. Hearings on boundary changes.

A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change.

Sec. 44.33.828. When boundary change takes effect.

When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

Article 12 Procedures for Petitioning

Section

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3 AAC 110.400. Applicability

Except as provided in 3 AAC 110.590, 3 AAC 110.410 - 3 AAC 110.660 apply to petitions for city reclassification under AS 29.04, for incorporation under AS 29.05, and for alterations to municipalities under AS 29.06. However, only those sections of 3 AAC 110.410 - 3 AAC 110.660 with which compliance is required under 3 AAC 110.590 apply to an annexation petition filed under a local action method provided for in AS 29.06.040 (c)(2) or (c)(3).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 20.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812

3 AAC 110.410. Petitioners

(a) A petition for a proposed action by the commission under this chapter may be initiated by

- (1) the legislature;
- (2) the commissioner;

(3) the staff of the commission or a person designated by the commission, subject to (d) of this section;

(4) a political subdivision of the state;

(5) a regional educational attendance area;

(6) a coastal resource service area;

(7) at least 10 percent of the persons registered to vote in a political subdivision of the state, in a regional educational attendance area, or in a coastal resource service area, if the petition seeks the alteration of a municipality under AS 29.06, other than by local option under AS 29.06.090 (b)(2) or AS 29.06.450 (a)(2);

(8) at least 10 percent of the persons registered to vote in a territory proposed for annexation by election under AS 29.06.040 (c)(1) or by legislative review under AS 29.06.040 (b) or AS 44.33.812 (b)(2);

(9) at least 25 percent of the persons registered to vote in a territory proposed for detachment by election under AS 29.06.040 (c)(1) or by legislative review under AS 29.06.040 (b) or AS 44.33.812 (b)(2); or

(10) the number of qualified voters required under

(A) AS 29.04.040 , if the petition seeks reclassification of a city;

(B) AS 29.05.060 , if the petition seeks a municipal incorporation; and

(C) AS 29.06.090 (b)(2) or AS 29.06.450 (a)(2), if the petition is a local option petition under those provisions.

(b) If, to achieve compliance with AS 29.06.100 (a), a petition for merger or consolidation must be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition. The number of borough voters required to sign the petition must be based on the number of registered voters or the number of votes cast in the area of the borough outside any city or cities joining the petition.

(c) The provisions of (a)(10) of this section may not be construed to apply to petition procedures established by the commission under AS 44.33.812 (a)(2), AS 29.06.040 (c) for annexation and detachment, AS 29.06.090 (b)(1) for merger and consolidation, or AS 29.06.450 (a)(1) for dissolution.

(d) The staff of the commission or a person designated by the commission may initiate a petition if the commission

(1) determines that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter; and

(2) directs the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

(e) The entity or group initiating a petition under (a) of this section is the petitioner. A petition must include a designation of one person as representative of the petitioner.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812

3 AAC 110.420. Petition

(a) A proposal for one or more actions by the commission under this chapter is initiated by filing a petition and supporting materials with the department.

(b) A petition must be filed on forms provided by the department. On the forms provided, the department shall require that the petition include the following information and supporting materials:

(1) the name of the petitioner;

(2) the name and class of any

(A) existing municipal government for which a change is proposed;

and

(B) proposed municipal government;

(3) a general description of the nature of the proposed commission action;

(4) a general description of the area proposed for change;

(5) a statement of reasons for the petition;

(6) legal descriptions, maps, and plats for a proposed municipality, or for any existing municipality for which a change is proposed;

(7) the size of the area proposed for change;

(8) the physical address and mailing address of the petitioner's representative designated under 3 AAC 110.410(e), and the telephone number, facsimile number, and electronic mail address, if any, for the representative;

(9) data estimating the population of the area proposed for change;

(10) information relating to public notice and service of the petition;

(11) the following tax data:

(A) the assessed or estimated value of taxable property in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which a change is proposed, levies or proposes to levy property taxes;

(B) projected taxable sales in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which the change is proposed, levies or proposes to levy sales taxes;

(C) each municipal government tax levy currently in effect in the territory proposed for change.

(12) a three-year projection of revenue, operating expenditures, and capital expenditures for a proposed municipality, or for any existing municipality for which a change is proposed;

(13) information about any existing long-term municipal debt;

(14) information about the powers and functions of

(A) a proposed municipality;

(B) any existing municipality for which a change is proposed, before and after the proposed change; and

(C) alternative service providers, including regional educational attendance areas and other service areas within the area proposed for change;

(15) the transition plan required under 3 AAC 110.900;

(16) information about the composition and apportionment of the governing body of

(A) a proposed municipality; and

(B) any existing municipality for which a change is proposed, before and after the proposed change;

(17) information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. 1971 - 1974 (Voting Rights Act of 1965);

(18) a supporting brief that provides a detailed explanation of how the proposal satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed commission action;

(19) documentation demonstrating that the petitioner is authorized to file the petition under 3 AAC 110.410;

(20) for petitions to incorporate or consolidate a home rule city or borough, the proposed municipal charter;

(21) an affidavit from the petitioner's representative that, to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate.

(c) The petitioner shall provide the department with a copy of the petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812

3 AAC 110.425. Legislative review annexation petitions

(a) Before a petition for annexation by the legislative review process may be submitted to the department under 3 AAC 110.420, the prospective petitioner shall prepare a complete draft of the prospective annexation petition and a summary of the prospective petition. The prospective petitioner shall also conduct a public hearing on the annexation proposal in accordance with (d) - (e) of this section.

(b) The prospective annexation petition required under (a) of this section shall be prepared using forms provided by the department under 3 AAC 110.420. The summary required under (a) of this section must include a map of the territory proposed for annexation, a synopsis of the views of the prospective petitioner regarding the application of applicable annexation standards to the proposed annexation, a summary of the reasonably anticipated effects of annexation, and an abstract of the transition plan required under 3 AAC 110.990.

(c) The prospective annexation petition and the summary shall be made available to the public on or before the first publication or posting of the notice of the hearing required under (e) of this section. The prospective petitioner shall make one copy of the prospective petition available for public review at a convenient location in or near the territory proposed for annexation for every 500 individuals reasonably estimated to reside in the territory proposed for annexation. However, the prospective petitioner need not provide more than five copies of the prospective petition for public review regardless of the population of the territory proposed for annexation. The prospective petitioner shall make the summary of the annexation proposal available for distribution to the public without charge at a convenient location in or near the territory proposed for annexation.

(d) The public hearing required under (a) of this section must address appropriate annexation standards and their application to the annexation proposal, legislative review annexation procedures, the reasonably anticipated effects of the proposed annexation, and the proposed transition plan required under 3 AAC 110.900. The hearing must be held at a convenient location in or near the territory proposed for annexation. The hearing must allow a period for comment on the proposal from members of the public. If the prospective petitioner is a municipality, the governing body shall conduct the hearing.

(e) In the manner provided for a hearing of the commission under 3 AAC 110.550, a prospective petitioner shall give public notice and a public service announcement of the public hearing required under (a) of this section.

(f) The department shall specify the text of the public notice required under (e) of this section, to ensure that the notice contains the following information:

- (1) the title of the notice of the hearing;
- (2) the name of the prospective petitioner;
- (3) a brief description of the nature of the prospective legislative review annexation proposal, including the size and general location of the area under consideration;
- (4) information about where and when the prospective petition is available for public review;
- (5) information about where the public may receive, without charge, a summary of the prospective petition;
- (6) a statement concerning who will conduct the hearing;
- (7) a statement of the scope of the hearing;
- (8) notification that public comments will be accepted during the hearing, and a statement of any time limits to be placed on individuals who offer comments;
- (9) the date, time, and place of the hearing;
- (10) a statement of compliance with 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act);
- (11) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(g) The department shall specify the text of the public service announcement required under (e) of this section, to ensure that the announcement contains the following information:

- (1) the title of the public service announcement;
- (2) the period during which the public service announcement is requested to be broadcast;
- (3) the name of the prospective petitioner;
- (4) a description of the prospective proposed action;
- (5) a statement of the size and general location of the area being considered for annexation;
- (6) information about where and when the prospective petition is available for public review;
- (7) information about where the public may receive, without charge, a summary of the prospective petition;
- (8) a statement concerning who will conduct the hearing;
- (9) the date, time, and place of the hearing;
- (10) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(h) When filing a petition with the department under this section, the prospective petitioner shall submit evidence of compliance with the requirements of (e) of this section, a written summary or transcript of the hearing, a copy of any written materials received during the hearing, and an audio recording of the hearing.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.430. Consolidation of petitions

If two or more petitions pending action by the commission affect all or some portion of the same territory, the chair of the commission may consolidate the informational session, briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.470; AS 44.33.812; AS 44.33.814; AS 44.33.818; AS 44.33.822; AS 44.33.826

3 AAC 110.440. Technical review of petition

(a) The department shall review the petition and supporting materials to determine whether they include a budget sufficient for commission review, a transition plan sufficient for commission review, and other required information. When applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The department shall complete the technical review of the petition within 45 days after receiving it, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If it determines that the petition or supporting materials are deficient in form or content, the department shall consult with the chair of the commission. With the concurrence of the chair of the commission, the department shall return the defective petition or supporting materials to the petitioner for correction or completion. With the concurrence of the chair of the commission, the department shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The department shall complete the technical review of any corrections or materials needed to complete the petition within 30 days after receiving them, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and this chapter, the department shall notify the petitioner that the petition and brief have been accepted for filing, and the department shall file the petition.

(d) The petitioner may appeal to the commission a determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.070; AS 29.06.040; AS 29.06.110; AS 29.06.480; AS 44.33.020; AS 44.33.812

3 AAC 110.450. Notice of petition

(a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish public notice of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department; if the department determines that a newspaper of general circulation, with

publication at least once a week, does not circulate in the territory, the department shall require the petitioner to provide notice through other means designed to reach the public;

(2) post public notice of the filing of the petition in

(A) at least three prominent locations readily accessible to the public and in or near the territory proposed for change; and

(B) other locations designated by the department;

(3) ensure that notices posted under (2) of this subsection remain posted through the deadline set under 3 AAC 110.640 by the chair of the commission for the filing of responsive briefs;

(4) hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(5) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department shall specify the text of the public notices required in (a)(1) - (a)(4) of this section, to ensure that the notices contain the following information:

(1) the title of the notice of the filing of the petition;

(2) the name of the petitioner;

(3) a description of the proposed action;

(4) a statement of the size and general location of the territory proposed for change;

(5) a map of the territory proposed for change, or information where a map of the territory is available for public review;

(6) a reference to the constitutional, statutory, and regulatory standards applicable to the commission's decision;

(7) a reference to the statutes and regulations applicable to procedures for consideration of the petition;

(8) designation of where and when the petition is available for public review;

(9) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

briefs,

(10) a reference to the regulations applicable to the filing of responsive

(11) the deadline for receipt of responsive briefs and comments;

(12) the mailing address, facsimile number, and electronic mail address for the submission of responsive briefs and comments to the department;

(13) a telephone number for inquiries to the commission staff.

(c) The department shall specify the text of the public service announcement required in (a)(5) of this section, to ensure that the announcement contains the following information:

(1) the title of the public service announcement;

(2) the period during which the public service announcement is requested to be broadcast;

(3) the name of the petitioner;

(4) a description of the proposed action;

(5) a statement of the size and general location of the territory proposed for change;

(6) a statement of where and when the petition is available for public review;

(7) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

(8) a statement of the deadline for responsive briefs and comments;

(9) a statement of where the complete notice of the filing may be reviewed;

(10) a telephone number for inquiries to the petitioner.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.460. Service of petition

(a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other interested persons and entities designated by the department. Copies of the petition documents,

including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a) (1), through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner shall make a full set of petition documents, including public notices, responsive briefs, the reply brief, and department reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.470. Proof of notice and service

No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.480. Responsive briefs and written comments

(a) If an interested person or entity seeks to participate as a respondent to a petition, that person or entity must have the capacity to sue and be sued, and must file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. If the respondent is a group, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(b) The responsive brief, and any companion exhibits, must be filed with an affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by an affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) An interested person or entity may file with the department written comments supporting or opposing the petition. Upon receiving those comments, the department shall provide promptly a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11 inches by 17 inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. Written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.490. Reply brief

The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.500. Limitations on advocacy

(a) Unless otherwise ordered by the commission, for good cause shown, the commission will not, and the department may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.510. Informational sessions

(a) If the department determines that persons or entities within or near the area of the proposed change have not had adequate opportunity to be informed about the scope, benefits and detriments of the proposed change, the department shall require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department may not proceed with the processing of the petition until the petitioner has certified, by affidavit, that the informational session requirements of this section have been met.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.520. Departmental public meetings

(a) During its investigation and analysis of a petition for incorporation, the department shall convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department may convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to each respondent at least 15 days before the public meeting. The department shall publish the notice at least once

each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or near the area of the proposed change. If the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the area of the proposed change, the department shall provide notice through other means designed to reach the public. The petitioner shall post notice of the meeting in at least three prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department an affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission shall preside at the public meeting. If the public meeting is held within the time period established under 3 AAC 110.640 for receiving written comments, the presiding staff person shall accept written materials submitted at the public meeting. However, except in extraordinary circumstances, the petitioner and the respondents may not submit further written materials at the meeting. The public meeting shall be recorded and summarized in the report with recommendations of the department prepared under 3 AAC 110.530.

(d) The department may postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.05.080; AS 29.06.040; AS 29.06.090; AS 29.06.110; AS 29.06.480; AS 44.33.812

3 AAC 110.530. Departmental report

(a) The department shall investigate and analyze a petition filed with the department under this chapter, and shall submit to the commission a written report of its findings with recommendations regarding the petition.

(b) The department shall mail to the petitioner and respondents its preliminary report with recommendations before submitting its final report with recommendations to the commission. Within 24 hours after receipt of the preliminary report with recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report with recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) In its final written report with recommendations, the department shall consider timely submitted written comments addressing the preliminary report with recommendations.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.06.040; AS 29.06.110; AS 29.06.490; AS 44.33.812

3 AAC 110.540. Amendments and withdrawal

(a) A petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. If voters initiated the original petition,

(1) the amended petition must contain the dated signatures of the same number of voters required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended petition with the original petition documents, post the public notice of the amended petition, and submit an affidavit of service and notice in the same manner required for the original petition.

(c) The chair of the commission may determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other steps or processes will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the chair of the commission may shorten the timing.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within or near the area of the proposed change is best served by allowing the proposed amendment or withdrawal.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812; AS 44.33.814

3 AAC 110.550. Commission public hearing

(a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place and subject of the hearing shall be

(1) mailed, postage prepaid, by the department to the petitioner and to each respondent;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall provide notice through other means designed to reach the public; and

(3) posted by the petitioner in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department shall submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the area of the proposed change and request that it be announced during the 21 days preceding the date of the hearing.

(d) The commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days before the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits

its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and to all other respondents by hand-delivery or postage-prepaid mail.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.090; AS 29.06.040; AS 29.06.120; AS 29.06.490; AS 44.33.812; AS 44.33.814; AS 44.33.818; AS 44.33.826

3 AAC 110.560. Commission hearing procedures

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

- (1) a report with recommendations from the department;
- (2) an opening statement by the petitioner, not to exceed 10 minutes;
- (3) an opening statement by each respondent, not to exceed 10 minutes;
- (4) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (5) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by each respondent;
- (6) sworn responsive testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (7) a period of public comment by interested persons, not to exceed three minutes for each person;

- (8) a closing statement by the petitioner, not to exceed 10 minutes;
- (9) a closing statement by each respondent, not to exceed 10 minutes; and
- (10) a reply by the petitioner, not to exceed five minutes.

(c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.

(d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.

(e) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the reports with recommendations of the department.

(f) The commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.090; AS 29.06.040; AS 29.06.120; AS 29.06.490; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.820; AS 44.33.826

3 AAC 110.570. Decisional meeting

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the chair of the commission may ask the department or a person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change must be altered to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission may alter the proposed change and accept the petition as altered. If the commission determines that a precondition must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to alter, impose preconditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.818; AS 44.33.820; AS 44.33.822; AS 44.33.826

3 AAC 110.580. Reconsideration

(a) Within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person or entity may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration.

(b) Within 20 days after a written statement of decision is mailed under 3 AAC 110.570(f), the commission may, on its own motion, order reconsideration of all or part of that decision.

(c) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person or entity requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for

reconsideration is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(d) If the person or entity filing the request for reconsideration is a group, the request must identify a representative of the group.

(e) The commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision if the commission determines that

(1) a substantial procedural error occurred in the original proceeding;

(2) the original vote was based on fraud or misrepresentation;

(3) the commission failed to address a material issue of fact or a controlling principle of law; or

(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(f) If the commission does not act on a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812; AS 44.33.814; AS 44.33.820; AS 44.33.822; AS 44.33.826

3 AAC 110.590. Certain local action annexations

(a) Except as otherwise provided in this section, if a petition is filed with the department under a local action method provided for in AS 29.06.040 (c)(2) or (c)(3) for annexation of adjacent municipally owned property or adjacent property by unanimous

consent of voters and property owners, only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

- (1) filing a petition under 3 AAC 110.420;
 - (2) technical review of the petition under 3 AAC 110.440;
 - (3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;
 - (4) responsive briefs and comments under 3 AAC 110.480, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;
 - (5) a reply brief under 3 AAC 110.490, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to seven days from the date that the petitioner received the responsive brief;
 - (6) a departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days before the public hearing under 3 AAC 110.550; interested persons may submit written comments to the department on its report no later than seven days before the public hearing;
 - (7) the commission's public hearing under 3 AAC 110.550, except that the commission may conduct the hearing by teleconference;
 - (8) the decisional meeting under 3 AAC 110.570;
 - (9) reconsideration under 3 AAC 110.580.
- (b) The commission may expand local action procedures for annexations under (a) of this section, so that those procedures include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state will be enhanced.
- (c) The commission may relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the commission determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.
- (d) Repealed 5/19/2002.

(e) If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission may convert a local action petition for an annexation described in (a) of this section to a legislative review petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 29.06.090; AS 29.06.450; AS 44.33.812; AS 44.33.814; AS 44.33.818; AS 44.33.826

3 AAC 110.600. Local action/local option elections

(a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06.

(b) If AS 29.06.040 requires a municipal election for a proposed annexation or detachment, the commission will notify the clerk of the municipality proposed for change of the commission's acceptance of a local action petition. The election must be administered by the municipality proposed for change at the municipality's own cost, and in the manner prescribed by its municipal election ordinances, except that the commission may specify the wording of the ballot measure and broaden the election notice requirements.

(c) Under AS 29.06.040 (c) and AS 44.33.812 (a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.110; AS 29.05.120; AS 29.06.040; AS 29.06.140; AS 29.06.510; AS 44.33.812

3 AAC 110.610. Legislative review

(a) The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If a decision of the commission requires legislative review, the commission will present a recommendation for the decision to the legislature during the first 10 days of a regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 29.06.090; AS 29.06.450; AS 44.33.812; AS 44.33.822; AS 44.33.826; AS 44.33.828

3 AAC 110.620. Judicial review

A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.630. Effective date and certification

(a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission may defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, or municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) When the requirements in (a) of this section have been met, the department shall issue a certificate describing the effective change. The department shall hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed, and shall file a copy of the certificate in each recording district of all territory within the municipality that has been changed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.120; AS 29.06.040; AS 29.06.140; AS 29.06.510; AS 44.33.812; AS 44.33.828

3 AAC 110.640. Scheduling

(a) The chair of the commission shall set or amend the schedule for action on a petition.

(b) In a schedule under (a) of this section, and except as provided by 3 AAC 110.590 for certain local action annexations, the chair of the commission shall allow at least

(1) 49 days after the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days after the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days after the date of mailing of a departmental preliminary report with recommendations to the petitioner for receipt of written summary comments to the department; and

(4) 21 days between the date of mailing of a final report with recommendations by the department to the petitioner and the commission hearing on the petition.

(c) The commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all of the same territory and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.070; AS 29.05.080; AS 29.05.090; AS 29.06.040; AS 29.06.090; AS 29.06.110; AS 29.06.120; AS 29.06.480; AS 29.06.490; AS 44.33.020; AS 44.33.812; AS 44.33.814; AS 44.33.826
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3 AAC 110.650. Resubmittals and reversals

Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

History: Eff. 7/31/92, Register 123; Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.450; AS 29.06.500; AS 44.33.812

Publisher's note: The authorities list is set out above to reflect changes from the list set out in the main pamphlet.

3 AAC 110.660. Purpose of procedural regulations; relaxation or suspension of procedural regulation

The purpose of the procedural requirements set out in 3 AAC 110.400 - 3 AAC 110.660 is to facilitate the business of the commission, and will be construed to secure the reasonable, speedy, and inexpensive determination of every action and proceeding. Unless a requirement is strictly provided for in the Constitution of the State of Alaska, AS 29, or AS 44.33.810 - 44.33.849, the commission may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.450; AS 44.33.812

AFFIDAVIT OF NOTICE, SERVICE, AND DEPOSIT OF PETITION FOR ANNEXATION OF TERRITORY TO THE CITY OF AKUTAN

I, _____, being first duly sworn on oath, depose and state that:

1. On the _____ day of _____, 2004, the notice entitled "Public Notice – Petition to Annex Territory to the City of Akutan", a copy of which is attached hereto as Exhibit 1, was posted at the following prominent locations readily accessible to the public within or near the territory proposed for annexation:

- (a) City of Akutan Offices (Akutan);
- (b) Akutan Post Office;
- (c) Aleutians East Borough School Building, Akutan;
- (d) McGlashan Store;
- (e) City of Akutan Health Clinic; and
- (f) Trident Seafoods Main Office, Akutan.

2. On the _____ day of _____, 2004, the notice described in paragraph 1 above was posted at the following prominent locations readily accessible to the public within the existing boundaries of the City of Akutan:

- (a) City of Akutan Offices (Akutan);
- (b) Akutan Post Office;
- (c) Aleutians East Borough School Building, Akutan;
- (d) McGlashan Store;
- (e) City of Akutan Health Clinic; and
- (f) Trident Seafoods Main Office, Akutan.

3. The notice posted at each of the places listed in paragraphs 1 and 2 will be inspected by me or an individual designated by me on a reasonable basis to ensure that they remain posted until February 25, 2005.

4. On the _____ day of _____, 2004, a copy of the notice described in paragraph 1 was mailed or hand delivered to the individuals and organizations whose names and addresses are listed in Exhibit 2 attached to this affidavit.

5. Notice of the filing of the petition was published in the *Dutch Harbor Fisherman* in a display ad format at least two columns wide and six inches long at least once each week for three consecutive weeks on the following dates:

6. The publisher's affidavit of publication or other evidence of publication in the *Dutch harbor Fisherman* is attached to this affidavit as Exhibit 3.

7. On the _____ day of _____, 2004, a copy of the complete petition was served in person or by the U.S. Mail Service, postage prepaid to the following:

Aleutians East Borough
P. O. Box 349
Sand Point, Alaska 99661

8. On the _____ day of _____, 2004, a full set of Petition documents was made available for public review at the Akutan City Offices in Akutan and in Anchorage. The City of Akutan acknowledges its obligation to make future documents in this proceeding available for public review as they are added to the record in this proceeding. All documents will remain available for public review through the last date on which the Local Boundary Commission may reconsider its final decision on the Petition under 3 AAC 110.580.

9. On the _____ day of _____, 2004, the public service announcement entitled "Public Notice – Petition to Annex Territory to the City of Akutan", was sent to KIAL/AM for broadcasting for fourteen days.

SIGNATURE OF AFFIANT

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200__.

Notary Public in and for the State of Alaska
My Commission expires: _____

Attached hereto are:

- Exhibit 1 - "Public Notice – Petition to Annex Territory to the City of Akutan";
- Exhibit 2 - List of names and addresses to whom the notice of filing of the Petition was mailed or hand delivered by the City of Akutan;
- Exhibit 3 - Evidence of publication of the notice in the *Dutch Harbor Fisherman*.